

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

STATE OF MISSISSIPPI; STATE OF  
ALABAMA; STATE OF ARKANSAS;  
COMMONWEALTH OF  
KENTUCKY; STATE OF  
LOUISIANA; STATE OF MISSOURI;  
and STATE OF MONTANA,  
*Plaintiffs,*

v.

XAVIER BECERRA, in his official  
capacity as Secretary of Health and  
Human Services; THE UNITED  
STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;  
CHIQUITA BROOKS-LASURE, in her  
official capacity as Administrator of the  
Centers for Medicare and Medicaid  
Services; THE CENTERS FOR  
MEDICARE AND MEDICAID  
SERVICES; THE UNITED STATES  
OF AMERICA,  
*Defendants.*

Case No. 1:22-cv-113-HSO-RPM

**Plaintiffs' Response in Opposition  
to Motion for Leave to Participate as  
*Amici Curiae* in Summary Judgment  
Hearing**

Plaintiffs—the States of Mississippi, Alabama, Arkansas, Louisiana, Missouri, and Montana and the Commonwealth of Kentucky—respond to the Motion to for Leave to Participate as *Amici Curiae* in Summary Judgment Hearing filed by Movants the Greensboro Health Disparities Collaborative and the NAACP State Conferences for Alabama, Arizona, Arkansas, Kentucky, Louisiana, Missouri, Mississippi, and Montana (Doc. 112, 113) and state:

1. On May 5, 2022, Plaintiffs (along with certain individual plaintiffs) filed a complaint against Xavier Becerra, in his official capacity as Secretary of Health and Human Services; Chiquita Brooks-LaSure, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services; the Centers for Medicare and Medicaid Services; the United States Department of Health and Human Services; and the United States of America. The complaint alleged that Defendants violated federal law by adopting an Anti-Racism Rule that encourages doctors to elevate race over medical treatment.

2. On March 28, 2023, this Court granted in part and denied in part Defendants' motion to dismiss the complaint. The Court ruled, in part, that Plaintiffs "sufficiently alleged that they have standing to sue due to injury to their sovereign interest in the enforcement of their laws" and that "judicial review of whether the Anti-Racism Rule qualifies as a clinical practice improvement activity" is not precluded by federal law. *Colville v. Becerra*, 2023 WL 2668513, at \*20 (S.D. Miss. Mar. 28, 2023). Subsequently, this Court ordered Plaintiffs to file their early dispositive motion for summary judgment by June 9, 2023. *See* Doc. 73.

3. On May 11, 2023, Movants filed a Motion to Intervene as Defendants and accompanying Memorandum of Law in Support. *See* Doc. 61, 62. State Plaintiffs and the government Defendants opposed the motion. *See* Doc. 75, 76, 77.

4. On June 9, 2023, State Plaintiffs filed an early motion for summary judgment. Doc. 78, 79. On July 12, 2023, this Court denied Movants motion to

intervene. Doc. 87. This Court instead granted Movants leave to appear as amici curiae. *Id.*

5. On July 28, 2023, Defendants filed their cross-motion for summary judgment and their opposition to State Plaintiffs' motion for summary judgment. Doc. 90, 91, 92.

6. On August 4, 2023, Movants filed their amicus brief. Doc. 96.

7. On September 5, 2023, State Plaintiffs filed their opposition to Defendants' cross-motion for summary judgment and rebuttal to Defendants' opposition to State Plaintiffs' motion for summary judgment. Doc. 108, 109.

8. On September 29, 2023, Movants filed their Motion for Leave to Participate as *Amici Curiae* in Summary Judgment Hearing. Doc. 112, 113.

6. This Court should deny Movant's motion. Plaintiffs' response is premised on the foregoing points and those set forth in their accompanying Memorandum of Authorities filed simultaneously with this Response.

FOR THESE REASONS, Plaintiffs request an order denying Movants' Motion to Leave to Participate as *Amici Curiae* in Summary Judgment Hearing.

Dated: October 13, 2023

Respectfully submitted,

s/ Scott G. Stewart

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\*pro hac vice

\*\*pro hac vice pending

\*\*\*pro hac vice forthcoming

### **CERTIFICATE OF SERVICE**

I e-filed this opposition with the Court, which will email everyone requiring service.

Dated: October 13, 2023

s/ Cameron T. Norris